

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEVE R. SMITH,
Plaintiff,

v.

JASON EAGLE,
Defendant.

Case No. [23-cv-02612-AMO](#) (PR)

**ORDER DENYING PRISONER *IN*
FORMA PAUPERIS APPLICATION AS
MOOT; DENYING CONSTRUED
MOTION TO REOPEN ACTION; AND
DIRECTIONS TO CLERK**

On May 26, 2023, Plaintiff Steve R. Smith, a former inmate at the Maguire Correctional Facility, filed a letter with the Court expressing his displeasure with the conditions of confinement in the jail. Dkt. 1. On that same date, the Clerk of the Court sent notices to Smith, informing him that his action could not go forward because he had not filed a complaint and a completed prisoner's *in forma pauperis* ("IFP") application. Dkts. 2, 3. The Clerk provided him with blank complaint and IFP application forms, along with a return envelope, instructions, and a notification that he must complete the complaint form and either pay the fee or return the completed IFP application within twenty-eight days, or his action would be dismissed. *Id.*

On June 30, 2023, Smith filed his completed *pro se* prisoner civil rights complaint form. Dkt. 7. However, Smith neither paid the filing fee nor returned the completed IFP application.

When more than twenty-eight days had passed after the deficiency notice was sent to Smith, and Smith had not responded to the notice, the Court, by Order dated July 13, 2023, dismissed the action without prejudice. Dkt. 9.

Thereafter, on July 27, 2023, Smith filed his completed prisoner IFP application. Dkt. 12. However, he did not file a motion to reopen the action. Nor did he explain why he was delayed in filing his completed prisoner IFP application. Instead, on the same date, he filed a letter indicating that his release date was on July 23, 2023, and his address after his release would be the following:

“216 Mt. Herman Road, Suite 185 E, Scotts Valley, CA 95066.” Dkt. 11.

On August 2, 2023, Clerk’s Office personnel sent Smith a letter informing him that his case had been closed on July 13, 2023, that he would need to file a motion to reopen, and that if he is released then he would need to file a non-prisoner IFP application, which was attached. *See* Dkt. 13 at 3. However, because the August 2, 2023 letter was sent to the jail, it was returned as undeliverable on August 14, 2023 because Smith was “NIC,” which means not in custody. *See id.* at 1.

Thereafter, since Smith had been released, Clerk’s Office personnel sent the same letter to Smith at the Mt. Herman Road address referenced above. Dkt. 14 at 2. That letter was also returned as undeliverable on December 28, 2023, with the following notation: “RETURN TO SENDER[,] NO MAIL RECEPTACLE[,] UNABLE TO FORWARD.” *Id.* at 1.

To date, Smith has not filed any other notices of a change of address nor has he communicated with the Court.

Accordingly, Smith’s pending prisoner IFP application is **DENIED** as moot because he has been released from the jail. Dkt. 12. To the extent that Smith’s filings (*see* Dkts. 11, 12) could be considered as a request to reopen the instant case, such a request is **DENIED** because he still has not submitted his completed *non-prisoner* IFP application. Smith may not proceed with this instant action without filing a *new* request for leave to proceed IFP. The Court will provide Smith with one *final* opportunity to submit a completed non-prisoner’s IFP application along with a motion to reopen, which indicates the reason for the delayed filing of his non-prisoner IFP application. If, within **twenty-eight (28) days** of the date this Order is filed, Smith complies, then the Court may order the action reopened. If, however, Smith fails to do so, the action will not be reopened.

The Clerk shall send Smith a copy of this Order along with the Court’s non-prisoner’s IFP application, instructions for completing it, and a return envelope. The Clerk shall mail the aforementioned documents to the above-referenced address, and it shall also reflect that same

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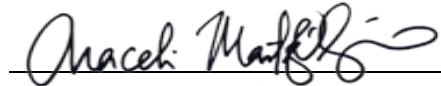
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address on the Court's electronic case management filing system as his current address.

This Order terminates Docket No. 12.

IT IS SO ORDERED.

Dated: February 26, 2024



ARACELI MARTÍNEZ-OLGUÍN
United States District Judge